

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ROBERT BOULE,

Plaintiff,

v.

ERIK EGBERT and JANE DOE EGBERT
and their marital community,

Defendants.

No. 2:17-cv-00106-RSM

MODEL STIPULATED PROTECTIVE
ORDER

ERIK EGBERT,

Counterclaimant,

v.

ROBERT BOULE,

Counterdefendant.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties

1 hereby stipulate to and petition the court to enter the following Stipulated Protective Order.
2 The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer
3 blanket protection on all disclosures or responses to discovery, the protection it affords from
4 public disclosure and use extends only to the limited information or items that are entitled to
5 confidential treatment under the applicable legal principles, and it does not presumptively
6 entitle parties to file confidential information under seal.

7 2. “CONFIDENTIAL” MATERIAL

8 “Confidential” material shall include the following documents and tangible things
9 produced or otherwise exchanged: Plaintiff’s medical records; Plaintiff’s tax records; Agent
10 Egbert’s employment records, including job applications, performance reviews, materials
11 created during any internal-affairs investigation, and any disciplinary records; Agent Egbert’s
12 insurance records, including insurance policies; communications between the parties and the
13 federal government; and any other document a party designates as confidential.

14 3. SCOPE

15 The protections conferred by this agreement cover not only confidential material (as
16 defined above), but also (1) any information copied or extracted from confidential material;
17 (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any
18 testimony, conversations, or presentations by parties or their counsel that might reveal
19 confidential material.

20 However, the protections conferred by this agreement do not cover information that is
21 in the public domain or becomes part of the public domain through trial or otherwise.

22 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

23 4.1 Basic Principles. A receiving party may use confidential material that is
24 disclosed or produced by another party or by a non-party in connection with this case only for
25 prosecuting, defending, or attempting to settle this litigation. Confidential material may be
26

1 disclosed only to the categories of persons and under the conditions described in this
2 agreement. Confidential material must be stored and maintained by a receiving party at a
3 location and in a secure manner that ensures that access is limited to the persons authorized
4 under this agreement.

5 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
6 ordered by the court or permitted in writing by the designating party, a receiving party may
7 disclose any confidential material only to:

8 (a) the receiving party's counsel of record in this action, as well as
9 employees of counsel to whom it is reasonably necessary to disclose the information for this
10 litigation;

11 (b) the officers, directors, and employees (including in house counsel) of
12 the receiving party to whom disclosure is reasonably necessary for this litigation, unless the
13 parties agree that a particular document or material produced is for Attorney's Eyes Only and
14 is so designated;

15 (c) experts and consultants to whom disclosure is reasonably necessary for
16 this litigation;

17 (d) the court, court personnel, and court reporters and their staff;

18 (e) copy or imaging services retained by counsel to assist in the duplication
19 of confidential material, provided that counsel for the party retaining the copy or imaging
20 service instructs the service not to disclose any confidential material to third parties and to
21 immediately return all originals and copies of any confidential material;

22 (f) during their depositions, witnesses in the action to whom disclosure is
23 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be
24 Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.
25 Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential
26

1 material must be separately bound by the court reporter and may not be disclosed to anyone
2 except as permitted under this agreement;

3 (g) the author or recipient of a document containing the information or a
4 custodian or other person who otherwise possessed or knew the information.

5 4.3 Filing Confidential Material. Before filing confidential material or discussing
6 or referencing such material in court filings, the filing party shall confer with the designating
7 party to determine whether the designating party will remove the confidential designation,
8 whether the document can be redacted, or whether a motion to seal or stipulation and proposed
9 order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and
10 the standards that will be applied when a party seeks permission from the court to file material
11 under seal.

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
14 party or non-party that designates information or items for protection under this agreement
15 must take care to limit any such designation to specific material that qualifies under the
16 appropriate standards. The designating party must designate for protection only those parts of
17 material, documents, items, or oral or written communications that qualify, so that other
18 portions of the material, documents, items, or communications for which protection is not
19 warranted are not swept unjustifiably within the ambit of this agreement.

20 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
21 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
22 unnecessarily encumber or delay the case development process or to impose unnecessary
23 expenses and burdens on other parties) expose the designating party to sanctions.

1 If it comes to a designating party's attention that information or items that it designated
2 for protection do not qualify for protection, the designating party must promptly notify all other
3 parties that it is withdrawing the mistaken designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in this
5 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
6 ordered, disclosure or discovery material that qualifies for protection under this agreement
7 must be clearly so designated before or when the material is disclosed or produced.

8 (a) Information in documentary form: (*e.g.*, paper or electronic documents
9 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
10 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that
11 contains confidential material. If only a portion or portions of the material on a page qualifies
12 for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by
13 making appropriate markings in the margins).

14 (b) Testimony given in deposition or in other pretrial proceedings: the
15 parties and any participating non-parties must identify on the record, during the deposition or
16 other pretrial proceeding, all protected testimony, without prejudice to their right to so
17 designate other testimony after reviewing the transcript. Any party or non-party may, within
18 fifteen days after receiving the transcript of the deposition or other pretrial proceeding,
19 designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party
20 desires to protect confidential information at trial, the issue should be addressed during the pre-
21 trial conference.

22 (c) Other tangible items: the producing party must affix in a prominent
23 place on the exterior of the container or containers in which the information or item is stored
24 the word "CONFIDENTIAL." If only a portion or portions of the information or item warrant
25 protection, the producing party, to the extent practicable, shall identify the protected portion(s).
26

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
2 designate qualified information or items does not, standing alone, waive the designating party's
3 right to secure protection under this agreement for such material. Upon timely correction of a
4 designation, the receiving party must make reasonable efforts to ensure that the material is
5 treated in accordance with the provisions of this agreement.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
8 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
10 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
11 challenge a confidentiality designation by electing not to mount a challenge promptly after the
12 original designation is disclosed.

13 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
14 regarding confidential designations without court involvement. Any motion regarding
15 confidential designations or for a protective order must include a certification, in the motion
16 or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
17 conference with other affected parties in an effort to resolve the dispute without court action.
18 The certification must list the date, manner, and participants to the conference. A good faith
19 effort to confer requires a face-to-face meeting or a telephone conference.

20 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
21 intervention, the designating party may file and serve a motion to retain confidentiality under
22 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden
23 of persuasion in any such motion shall be on the designating party. Frivolous challenges, and
24 those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and
25 burdens on other parties) may expose the challenging party to sanctions. All parties shall
26

1 continue to maintain the material in question as confidential until the court rules on the
2 challenge.

3 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
4 OTHER LITIGATION

5 If a party is served with a subpoena or a court order issued in other litigation that
6 compels disclosure of any information or items designated in this action as
7 “CONFIDENTIAL,” that party must:

8 (a) promptly notify the designating party in writing and include a copy of
9 the subpoena or court order;

10 (b) promptly notify in writing the party who caused the subpoena or order
11 to issue in the other litigation that some or all of the material covered by the subpoena or order
12 is subject to this agreement. Such notification shall include a copy of this agreement; and

13 (c) cooperate with respect to all reasonable procedures sought to be pursued
14 by the designating party whose confidential material may be affected.

15 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

16 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
17 confidential material to any person or in any circumstance not authorized under this agreement,
18 the receiving party must immediately (a) notify in writing the designating party of the
19 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
20 protected material, (c) inform the person or persons to whom unauthorized disclosures were
21 made of all the terms of this agreement, and (d) request that such person or persons execute
22 the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

1 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

3 When a producing party gives notice to receiving parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of the
5 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
6 provision is not intended to modify whatever procedure may be established in an e-discovery
7 order or agreement that provides for production without prior privilege review. The parties
8 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

9 10. NON TERMINATION AND RETURN OF DOCUMENTS

10 Within 60 days after the termination of this action, including all appeals, each receiving
11 party must delete or destroy all confidential material that was disclosed or produced by another
12 party or by a non-party in connection with this case, including all copies, extracts and
13 summaries thereof.

14 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
15 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
16 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
17 work product, even if such materials contain confidential material.

18 The confidentiality obligations imposed by this agreement shall remain in effect until
19 a designating party agrees otherwise in writing or a court orders otherwise.

20 //

21 //

22 //

23 //

24 //

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: July 5, 2017

3 PAUKERT & TROPPEMANN, PLLC
4 Attorneys for Plaintiff

MILLS MEYERS SWARTLING P.S.
Attorneys for Agent Erik Egbert

5 By: s/Breean L. Beggs per 6/30/17
6 e-mail authority
7 Breean L. Beggs, WSBA No. 20795
8 Paukert & Troppmann, PLLC
9 522 W Riverside Ave, Ste 560
10 Spokane, WA 99201
11 Telephone: (509) 232-7760
12 Fax: (509) 232-7762
13 E-mail: bbeggs@pt-law.com

By: s/Nikki C. Carsley
Geoffrey Grindeland, WSBA No. 35798
Nikki C. Carsley, WSBA No. 46650
Mills Meyers Swartling P.S.
1000 2nd Avenue, 30th Floor
Seattle, WA 98104
Telephone: (206) 382-1000
Fax: (206) 386-7343
E-mail: ggrindeland@millsmeyers.com
ncarsley@millsmeyers.com

14 PURSUANT TO STIPULATION, IT IS SO ORDERED

15 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of
16 any documents in this proceeding shall not, for the purposes of this proceeding or any other
17 proceeding in any other court, constitute a waiver by the producing party of any privilege
18 applicable to those documents, including the attorney-client privilege, attorney work-product
19 protection, or any other privilege or protection recognized by law.
20

21 DATED: July 10, 2017

22
23 

24 RICARDO S. MARTINEZ
25 CHIEF UNITED STATES DISTRICT JUDGE
26

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty
5 of perjury that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Western District of Washington on
7 _____ in the case of *Robert Boule v. Erik Egbert, et al.*, Case No. 2:17-cv-
8 00106-RSM. I agree to comply with and to be bound by all the terms of this Stipulated
9 Protective Order and I understand and acknowledge that failure to so comply could expose me
10 to sanctions and punishment in the nature of contempt. I solemnly promise that I will not
11 disclose in any manner any information or item that is subject to this Stipulated Protective
12 Order to any person or entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated
15 Protective Order, even if such enforcement proceedings occur after termination of this action.

16
17 Date: _____

18
19 City and State where sworn and signed: _____

20
21 Printed name: _____

22
23 Signature: _____